

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of	)	
	)	
A. R. S.	)	OAH No. 09-0641-PFD
	)	Agency No. 2008-063-0440
<u>2008 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

A. R. S. applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division (division) determined that the application was untimely and denied it initially and at the informal appeal level. Mr. S. requested a hearing and appeared by telephone; Peter F. Scott represented the division by telephone.

Based upon a review of the entire record and after careful consideration, the division’s denial of Mr. S.’s application for a 2008 permanent fund dividend is affirmed.

**II. Facts**

Mr. S. signed his 2008 PFD application on March 31, 2008,<sup>1</sup> and took the application to the post office that same day.<sup>2</sup> However, his application did not get postmarked until April 1, 2008.<sup>3</sup> Later, one day during October 2008, Mr. S. was speaking to his sister on the telephone. She became concerned about Mr. S. during the conversation, so at her direction he drove himself to the hospital. There, he was incoherent and it was determined that Mr. S. had had a stroke and he was hospitalized. He testified that it took two weeks to remember his name and he had to learn to read and write all over again. At the hearing, Mr. S. described himself as “doing pretty good” one year later.

Mr. S.’s doctors determined his stroke was caused by an undiagnosed blood clot that had subsequently cleared itself out. Three providers have submitted information on Mr. S.’s behalf: 1) L. H., Speech Therapist at the Mat-Su Regional Outpatient clinic, who indicated she had been working with Mr. S. since October 2008;<sup>4</sup> 2) Dr. J. L. S., who certified Mr. S. was disabled as of

---

<sup>1</sup> Exh. 1 at pg. 1.  
<sup>2</sup> Hearing testimony of A. S.  
<sup>3</sup> Exh. 1 at pg. 3.  
<sup>4</sup> Exh. 3 at pg. 4.

March 31, 2008, but did not submit a written statement explaining the disability in 2008; and 3) X. G., FNP, who stated that she could not certify that Mr. S. was disabled on March 31, 2008.<sup>5</sup>

### III. Discussion

In order to qualify for a PFD, an applicant must file a timely application.<sup>6</sup> The application period runs from January 1<sup>st</sup> through March 31<sup>st</sup> of the applicable year.<sup>7</sup> However, “if an individual was disabled, as defined in AS 43.23.095, during the application period of the prior year and, as a result of the disability, did not timely file an application, that individual or an authorized representative may submit an application for the prior year dividend.”<sup>8</sup>

The term ‘disabled’ is defined in AS 43.23.095. It means “physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause....”<sup>9</sup>

Mr. S. asserts that he should be entitled to the 2008 PFD because he has been disabled by his blood clot and resulting stroke. The division’s position is that Mr. S. was not disabled for PFD purposes during the 2008 application period. As a result, the division maintains he is not eligible, and since his application was late, the division’s denial must be affirmed.

The standard for a finding of disability for PFD eligibility purposes is very high. In order to be considered disabled such that a late application is considered timely, an individual must have been “physically or mentally unable to complete and sign an application . . . .”<sup>10</sup> In addition, the applicant’s health care provider must certify that the applicant “was disabled on March 31 of the dividend year for which the individual is applying . . . .”<sup>11</sup> A necessary part of this process is that the provider must also submit a statement “explaining why the disability prevented the applicant from timely filing an application” during the application period for the PFD in question.<sup>12</sup>

---

<sup>5</sup> Exh. 7 at pg. 9. It should be noted that both Dr. S. and Ms. G. also submitted statements certifying Mr. S.’s disability as of *March 31, 2009*. See Dr. S.’s certification at Exhibit 7, pg. 7, and Ms. G.’ certification at Exhibit 7, pg. 10. The question whether Mr. S. was disabled in 2009 goes to his eligibility for the 2009 PFD, not the 2008 dividend, so the health care provider certifications for 2009 are not applicable for this appeal.

<sup>6</sup> AS 43.23.005(a)(1).

<sup>7</sup> AS 43.23.011(a).

<sup>8</sup> 15 AAC 23.133(d).

<sup>9</sup> AS 43.23.095(2).

<sup>10</sup> AS 43.23.095(2) (emphasis added).

<sup>11</sup> 15 AAC 23.133(d)(1).

<sup>12</sup> 15 AAC 23.133(d)(2).

Mr. S. cannot make such a showing because none of his health care providers submitted adequate proof of his condition on March 31, 2008. Dr. S. was the only provider who actually signed the statement certifying Mr. S. was disabled on that date, but the doctor did not submit a statement explaining Mr. S.'s disability, as required by PFD regulation 15 AAC 23.133(d)(2). Ms. H., the speech therapist, did not begin treating Mr. S. until October 2008, so she was unable to certify he was disabled on March 31, 2008. Likewise, X. G. acknowledged she could not certify that Mr. S. was disabled on that date.

Mr. S. maintains he had several health issues such as memory loss, weight gain and problems controlling his diabetes, that went unrecognized earlier in 2008 and that his blood clot could have been affecting him for more than a year.<sup>13</sup> It appears that Mr. S. had been having health problems for a considerable period of time before his stroke. However, he has been unable to provide sufficient proof that he was disabled on March 31, 2008. Mr. S.'s situation is unfortunate, but there is no provision in the law that allows the division to accept his late application under these circumstances. The division was correctly applying the law when it denied his application.

#### **IV. Conclusion**

Because Mr. S. was not disabled, as defined in AS 43.23.095, during the 2008 application period, his application for the 2008 PFD is not timely and he is thus not entitled to the dividend that year. The PFD division correctly applied the law when it denied his application for a 2008 permanent fund dividend.

DATED this 19<sup>th</sup> day of March, 2010.

By: *Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

---

<sup>13</sup> Exh. 7 at pg. 3.

## Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 16<sup>th</sup> day of April, 2010.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]